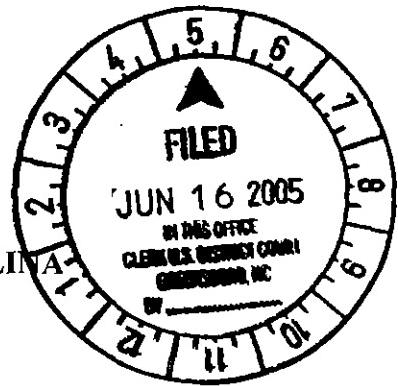


**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**



Santiago Ibarra Torres,)
Petitioner.)
v.)
Randall Lee, Warden.)
Respondent.)

1:05CV00539

**ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a prisoner of the State of North Carolina, has submitted a petition under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state custody, together with an application to proceed in forma pauperis. The Clerk of Court received the submission on June 1, 2005, which petitioner had dated as of May 27, 2005. For the following reasons, the petition cannot be further processed.

1. The page length of the memorandum or attachment exceeds the 20 page limit set out in LR 7.3(d).
2. An insufficient number of copies was furnished. Petitioner must submit the original and two copies. [Attached instructions and Rule 3(a), Rules Governing § 2254 Cases.]
3. Petitioner is advised that the respondent will usually file the entire state court record of his cases, therefore it is not necessary for him to include parts of the state court record as exhibits.

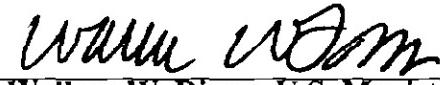
Because of these pleading failures, this particular petition should be filed and then dismissed, without prejudice to petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed in forma pauperis, and otherwise correcting the defects noted. The Court has no authority to toll the statute of limitation, therefore it continues to run, and petitioner must act quickly if he wishes to pursue this petition. See Spencer v. Sutton, 239 F.3d 626 (4th Cir. 2001). To further aid petitioner,

the Clerk is instructed to send petitioner a new application to proceed in forma pauperis, and new § 2254 forms.

In forma pauperis status will be granted for the sole purpose of entering this order of dismissal with permission to file a new petition which corrects the defects of the present petition.

IT IS THEREFORE ORDERED that in forma pauperis status is granted for the sole purpose of entering this order. The Clerk is instructed to send petitioner Section 2254 forms, instructions, and a current application to proceed in forma pauperis.

IT IS RECOMMENDED that this action be filed, but then dismissed sua sponte without prejudice to petitioner filing a new petition which corrects the defects of the current petition. The new petition must be accompanied by either the five dollar filing fee or a current application to proceed in forma pauperis.



Wallace W. Dixon, U.S. Magistrate Judge

June 16, 2005